

**FIRST ADDENDUM TO DEVELOPMENT AGREEMENT**

**THIS FIRST ADDENDUM TO DEVELOPMENT AGREEMENT** is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 2007 (this "First Addendum") by and between the CITY OF MIAMI BEACH, FLORIDA ("Owner" or "City"), a municipal corporation duly organized and existing under the laws of the State of Florida, and NEW WORLD SYMPHONY, a not-for-profit Florida corporation ("Developer") (the Owner and Developer, each a "Party" and collectively, the "Parties").

**RECITALS**

A. Owner and Developer entered into an Agreement of Lease ("Lease") dated as of January 5, 2004, pursuant to which Owner leased to Developer certain real property described in Exhibit "A" attached hereto and made a part hereof (the "Land").

B. Concurrently therewith, Owner and Developer also entered into a Development Agreement ("Development Agreement") dated as of January 5, 2004, setting forth, among other things, the Owner's and Developer's respective responsibilities and agreement to coordinate and cooperate in the planning, scheduling and approval of the development, design and construction of an automobile parking garage (the "Garage") to be located on land adjacent to the Land, and a performance, educational and internet broadcast facility, together with certain related amenities, facilities and other infrastructure improvements on the Land ("Developer's Improvements"), as set forth in the Development Agreement.

C. The Development Agreement provided that Owner would develop certain unspecified "Infrastructure Improvements" as a condition of Developer's obligation to construct the Developer's Improvements, and that specific Infrastructure Improvements would be identified in the future, subject to the Owner obtaining the City Commission's approval. The Infrastructure Improvements have now been identified, subject to the required approvals.

D. The Development Agreement also contemplated that Owner might develop a park ("Park") or another similar public amenity on real property defined in the Development Agreement as the "Adjacent Property" and re-defined herein as the "Park Project Zone." A Park has been envisioned for the Park Project Zone for some time, and is a part of the City's District Master Plan.

E. Following the execution of the Lease and Development Agreement, the Parties have worked together to define the processes and refine the scope for implementing the Developer's plans for the Developer's Improvements on the Land and the City's overall vision for enhancing the development of the Park and the areas surrounding the Park and the Land, for the use and enjoyment by all residents of and visitors to the City of Miami Beach and by all visitors to the Project (as that term is re-defined herein). The Parties now wish to enter into this First Addendum in order to memorialize their agreements regarding their respective obligations for implementing the foregoing.



NOW THEREFORE, it is hereby mutually covenanted and agreed by and between the Parties hereto that this First Addendum is made in consideration of the terms, covenants and conditions hereinafter set forth.

1. Capitalized Terms; Recitals. All capitalized terms not defined herein shall have the meanings given to them in the Development Agreement. For convenience, the original Article 1, entitled "Definitions," of the Development Agreement is attached hereto as Exhibit "B." Hereafter, all references to the Development Agreement shall mean the Development Agreement as modified and augmented by this First Addendum, unless the context indicates otherwise. The Recitals are incorporated herein by reference.

2. Additional and Revised Definitions. Article 1, entitled "Definitions," is amended by adding or revising the following definitions:

(a) "Additional Improvements" means certain improvements to City owned real property planned for and included only within Zone 1 and Zone 2, as described in subsection (cc) herein (but excluding Developer's Improvements and the Garage). The Additional Improvements may include streetscaping, landscaping, utilities, graphics, lighting, adjustments to curblines, sidewalks, hardscape, streetscape furniture, and the design, development, engineering and construction of such improvements all as may be determined for each Zone in accordance with the applicable approval process and approved budget. The Additional Improvements in Zones 1 and 2, and the improvements planned for Zones 4 and 5 are, together, the "Infrastructure Improvements" addressed in Article 23 of the Development Agreement.

(b) "Change" means any proposed or approved material addition, deletion, or revision in the Work, or an adjustment in the Guaranteed Maximum Price, or the Completion Date or other construction timetable, issued on or after the Guaranteed Maximum Price has been agreed to.

(c) "Change Order" means a document which is signed by Developer, Contractor, Owner and the Architect, (if required) and authorizes a Change.

(d) "Development Site" is amended to mean Zones 1 and 2, and in the event the Park Project is approved by the City, Zone 3 as well.

(e) "Design-to Park Project Budget" means the preliminary total costs budgeted by the City for the Park Project, which is the preliminary estimate of costs, including estimated hard and soft construction costs, anticipated as of the date hereof, to be incurred in connection with the design, development and construction of the Park Project. As of the date hereof, the parties acknowledge and agree that the City has budgeted an amount not to exceed \$13,800,000 for Zones 3.1, 3.2 and 3.3, and an additional \$1,150,000 for Zone 3.4, for a total of \$14,950,000 for the entire Park Project.

(f) "Final Completion" means the date the GMP Contract has been fully performed, all the Work has been completed and a final Certificate for Payment approved by the Owner has been issued by the Architect.



(g) "Final Garage Budget" means the final budget, as mutually agreed to by the Parties, and as approved by the City Commission prior to establishment between Developer and its Contractor of the Guaranteed Maximum Price, and representing the final hard and soft construction costs approved in connection with the design, development and construction of the Garage, as reflected in the Preliminary Garage Budget.

(h) "Final Park Project Budget" means the final budget, as mutually agreed to by the Parties, and as approved by the City Commission prior to establishment between Developer and its Contractor of the Guaranteed Maximum Price, and representing the final hard and soft construction costs approved in connection with the design, development and construction of the Park Project. Notwithstanding the preceding sentence, in the event that the Additional Improvements are designed, developed and constructed for less than the "not to exceed \$6,400,000" amount, then any unused funds shall be applied by the Parties toward the design, development and construction of the Park Project, and, accordingly, shall be added to the Final Park Project Budget.

(i) "GMP Contract" means the guaranteed maximum price ("Guaranteed Maximum Price") contract signed with the Contractor.

(j) "Garage" means the public municipal parking garage comprising Zone 1.1 to be designed, developed and constructed by Developer for Owner and funded as set forth in Section 13 hereof, and operated by Owner at its sole cost and expense on City-owned property adjacent to the Land, legally described in Exhibit "C." It is anticipated that the Garage will have 6 stories, including 5 stories of covered parking plus open rooftop parking, and ground-floor retail space along 17<sup>th</sup> Street and Pennsylvania Avenue.

(k) "Garage Design Costs" shall include but not limited to all costs, fees and expenses associated with the preparation, design, engineering, planning, work, input and analysis by Developer and all of its agents, employees, contractors, consultants and professionals, including but not limited to the Architectural Consultant, in respect of the overall design, management and construction administration for the Garage.

(l) "Park" means the public park facility that is proposed to be developed within the Park Project Zone pursuant to this First Addendum.

(m) "Park Project" means all of the improvements to be designed, developed and constructed within Zone 3- the Park Project Zone (including Zones 3.1, 3.2, 3.3 and 3.4), in accordance with the provisions of this First Addendum.

(n) "Park Project Concept Plan" means the design of the Park Project prepared by the Architectural Consultant in consultation with the Developer and the City Manager to be submitted for the review of the City Commission pursuant to the provisions of Section 10 and Exhibit "D" hereof.



(o) "Park Project Costs" means all costs, fees and expenses incurred in connection with the design, development and construction of the Park Project, all of which costs, fees and expenses are and shall be at the sole cost and expense of the Owner.

(p) "Park Project Design" means the final design of the Park Project approved by the Design Review Board ("DRB"), and based upon the final "Basis of Design Report" as set forth in Section 10 hereof.

(q) "Park Project Design Costs" shall include but not limited to all costs, fees and expenses associated with the preparation, design, engineering, planning, work, input and analysis by Developer and all of its agents, employees, consultants and professionals, including but not limited to the Architectural Consultant, with respect to: (i) the Park Project Concept Plan and any modifications thereof; (ii) the modifications to the draft Basis of Design Report requested by the City, in accordance with the provisions of this Section and the Program described in Exhibit "D," (iii) the final Basis of Design Report; (iv) the "Design-to" Park Project Budget; (v) the Preliminary Park Project Budget; (vi) Owner's approval process, all subject to Section 10(f) below; and (vii) all construction administration and management.

(r) "Preliminary Additional Improvements Budget" means the preliminary total costs budgeted by the City for the Additional Improvements, including estimated hard and soft construction costs ("Additional Improvements Costs"), anticipated as of the date hereof to be incurred in connection with the design, development and construction of the Additional Improvements.

(s) "Preliminary Garage Budget" means the total costs budgeted by the City for the Garage, as mutually agreed to by the Parties and as approved by the City Commission, which is the preliminary estimate of costs, including estimated hard and soft construction costs ("Garage Costs"), anticipated as of the date hereof to be incurred in connection with the design, development and construction of the Garage. As of the date hereof, the Parties acknowledge and agree that the City has budgeted an amount not to exceed \$15,210,135 for the Garage.

(t) "Preliminary Park Project Budget" means the total cost budgeted by the City for the Park Project, as mutually agreed to by the Parties and as approved by the City Commission concurrently with the approval of the Park Project Concept Plan (as set forth in Section 10 hereof), which is the preliminary estimate of costs, including estimated hard and soft construction costs, anticipated as of the date thereof to be incurred in connection with the design, development and construction of the Park Project, including the sound system. The Parties acknowledge and agree that the Preliminary Park Project Budget shall be established in accordance with the dollar amounts set forth in the "Design to" Park Project Budget in the amount of \$14,950,000.

(u) "Program" means the procedure the Parties shall follow in connection with obtaining City approval of the Park Project Design, as described on Exhibit "D."



(v) "Project" means the Developer's Improvements, the Additional Improvements proposed to be designed and constructed in Zones 1 and 2, and the Garage; in other words, all improvements of every kind to be located in Zones 1 and 2.

(w) "Project Site" means Zones 1 and 2.

(x) "Substantial Completion" means the time when the Work or designated portion thereof (which the Owner agrees to accept separately) is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.

(y) "Unavoidable Delays" means delays due to strikes, slowdowns, lockouts, acts of God, inability to obtain labor or materials reasonably within the originally contracted for price range, war, enemy action, civil commotion, fire, casualty, severe weather conditions, eminent domain, a court order which actually causes a delay (unless resulting from disputes between or among the Parties alleging an Unavoidable Delay, present or former employees, officers, members, partners or shareholders of such alleging Party or Affiliates, or present or former employees, officers, partners, members or shareholders of such Affiliates of such alleging Party), the application of any Requirement, or another cause beyond such Party's control or which, if susceptible to control by such Party, shall be beyond the reasonable control of such Party. Such Party shall use reasonable good faith efforts to notify the other Party not later than twenty (20) days after such Party knows of the occurrence of an Unavoidable Delay. Failure to provide timely notice, as set forth herein, shall not be deemed a waiver by the Party alleging an Unavoidable Delay. In no event shall (i) any Party's financial condition other than due to a material increase in the costs of labor or materials, or inability to fund or obtain funding or financing, constitute an "Unavoidable Delay" (except for an Institutional Lender's inability to fund, which inability is not caused by Developer) with respect to such Party, (ii) nor shall any delay arising from a Party's (or its Affiliate's) default under this Development Agreement or any of the Construction Agreements, constitute an "Unavoidable Delay" with respect to such Party's obligations hereunder. The times for performance set forth in this Development Agreement and First Addendum (other than for monetary obligations of a Party) shall be extended to the extent performance is delayed by Unavoidable Delay, except as otherwise expressly set forth in this Development Agreement.

(z) "Work" means the construction and services required by the applicable contract documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the contractor to fulfill its obligations. The Work may constitute the whole or a part of the applicable Project.

(aa) "Zone" or "Zones" mean the geographical areas in which the three (3) primary components of the Project and the Park are located, and the proposed improvements (including, without limitation, the proposed Additional Improvements and Infrastructure Improvements) within each geographical area. The Zones are generally but not legally described below and are identified on the sketch attached hereto as Exhibit "E."



(i) Zone 1 - Parking Garage Zone, which means the real property owned by Owner and generally described as the land bounded on the North by 17<sup>th</sup> Street, on the East by the Land, on the South by Lincoln Lane and on the West by Pennsylvania Avenue.

(ii) Zone 2 - Symphony Campus Zone, which means the real property owned by Owner and generally described as the land bounded on the North by 17<sup>th</sup> Street, on the East by the realigned Drexel Avenue, on the South by Lincoln Lane and on the West by the Garage Property.

(iii) Zone 3 - Park Project Zone, which means the two parcels of real property owned by Owner and generally described as follows: (A) the land bounded on the North by 17<sup>th</sup> Street, on the East by Washington Avenue, on the South by Lincoln Lane and on the West by the realigned Drexel Avenue (Zones 3.1, 3.2 and 3.3); and (B) a portion of land surrounding part of the City's Theater of Performing Arts ("TOPA") and bounded on the north by \_\_\_\_\_, on the south by 17<sup>th</sup> Street, on the east by Washington Avenue and on the west by \_\_\_\_\_ (Zone 3.4).

(iv) Zone 4 - Lincoln Lane Improvement Zone, which means the real property owned by Owner and generally described as that portion of Lincoln Lane bordered on the West by Pennsylvania Avenue and on the East to Washington Avenue.

(v) Zone 5 - Pennsylvania Avenue Improvement Zone, which means the real property owned by Owner and generally described as that portion of Pennsylvania Avenue bordered on the North by 17<sup>th</sup> Street and on the South by Lincoln Lane.

3. Amendment or Replacement of Certain Sections of Development Agreement.

(a) The following section or subsections in the Development Agreement are deleted in their entirety and replaced with the following:

(b) Section 2.9, "Confirmation of Land Development Regulations," is amended by deleting it in its entirety and replacing it with the following:

"The zoning district classification of Zones 1, 2 and 3 is CCC, as defined in the Land Development Regulations."

(c) Section 2.10(b), "Required Development Permits," is deleted in its entirety and replaced with the following:

"To the best of Owner's knowledge and belief, other than pertaining to Zone 1, Zones 2.2 and 2.3 and Zone 3, there are no reservations and/or dedications of land for public purposes that are proposed under the terms of this Development Agreement."

(d) Section 2.11, "Developer's Right of Termination" is deleted in its entirety replaced with the following:



Notwithstanding anything to the contrary contained herein, Developer shall have the right to terminate this Development Agreement and the Ground Lease and to be released from all liability hereunder and thereunder in the event that Owner, in its proprietary capacity, imposes requirements or restrictions upon Developer's performance of its obligations as Developer hereunder, which requirements or restrictions impose an undue burden on Developer or render the Project economically unfeasible in Developer's reasonable business judgment. In the event of termination of this Development Agreement and the Ground Lease pursuant to this Section 2.11, the Owner shall reimburse Developer for all Garage Costs, Additional Improvements Costs and Park Project Costs incurred by Developer on Owner's behalf, and following Developer's receipt of payment in cleared funds of all sums due hereunder, each Party shall bear its own other costs and expenses incurred in connection with this Development Agreement and the Ground Lease and neither Party shall have any further liability to the other.

(e) Section 6.1 "Developer's Contributions" is deleted in its entirety and replaced with the following:

Section 6.1 Developer's and Owner's Contributions. Developer shall provide all of the funds necessary to complete Construction of Developer's Improvements in Zone 2.1. Owner shall provide all of the funds necessary to complete Construction of (i) all improvements within Zone 1, including the Garage and the Additional Improvements to be located in Zones 1.2 and 1.3 of the Parking Garage Zone, and (ii) the Additional Improvements in Zones 2.2 and 2.3, subject to the other provisions of the Development Agreement. As to the retail portion of the Garage, Developer shall only be responsible for delivering to Owner, and Owner shall only be responsible for funding, a vanilla shell retail space, as defined in Exhibit "F", attached hereto. Owner shall be responsible for all leasing and management operations of the Garage, including the retail portion of the Garage.

(f) Section 6.2 "Fees" is deleted in its entirety and replaced with the following:

Permit Fees. Developer assumes payment responsibility for any and all Permits, now or hereafter, required to be obtained from the City or any other Governmental Authority for the construction of Developer's Improvements in Zone 2.1, including without limitation, building permit applications, inspection, certification, impact and connection fees that the City may levy by or through its Public Works Department (including, without limitation, water and sewer fees) and those fees, to the extent applicable, listed in the City of Miami Beach Building Department Fee Schedule, or the most current edition adopted by the City, which fee schedule is hereby incorporated by reference and made a part of this Agreement (collectively, the "Fees"). Owner shall be responsible for all Fees associated with the Garage, the Additional Improvements, the Park Project, and the Infrastructure Improvements; the amounts of all such Fees will be included in the applicable budgets.

(g) Sections 23.3 and 23.4 of the Development Agreement, entitled "Adjacent Property" and "Park," are deleted in their entirety and replaced with the pertinent provisions of this First Addendum.



- (h) Section 10.1(f) is deleted in its entirety and replaced with the following:

If there is more than one Recognized Mortgagee, only the three (3) most senior in lien Recognized Mortgagees, to the exclusion of all other Recognized Mortgagees, shall be recognized as having rights under this Article 10, unless one of such senior priority Recognized Mortgagees has designated in writing to Owner a Recognized Mortgagee whose Mortgage is junior in lien to exercise such right.

4. City's Obligations Regarding Infrastructure Improvements. The City has refined its plans for the construction and development of certain public improvements to City-owned property located within Zones 1, 2, 3, 4 and 5.

(a) The Additional Improvements to City-owned property in Zone 1 and Zone 2 (but specifically excluding the Developer's Improvements to be constructed by Developer within Zone 2.1 – the Symphony Campus), together with the improvements to City-owned property in Zones 4 and 5 are designated to be the "Infrastructure Improvements" referred to in Article 23 of the Development Agreement. Upon timely completion of performance of all of Owner's obligations regarding the Infrastructure Improvements, Owner shall have satisfied in full all of its obligations under Section 23.1 of the original Development Agreement.

(b) The Additional Improvements planned in Zone 1 and Zone 2 constitute portions of the "Infrastructure Improvements" referred to in Section 23 of the original Development Agreement and designated in this Addendum. The City's planned improvements within Zones 4 and 5 are not included within the definition of "Additional Improvements" but are included within the definition of "Infrastructure Improvements."

(c) Because the coordinated construction, development and use of the Project and the Additional Improvements will provide mutual benefits to both parties by enhancing the availability and use of all of the Developer's Improvements as well as other Property owned by the City, Owner has requested, and Developer has agreed, that Developer shall cause to be designed, developed and constructed, at Owner's sole cost and expense, the Additional Improvements in accordance with the Project Plans and Specifications and the Preliminary Additional Improvements Budget.

5. Zones 1 and 2. Sections 23.2.2 and 23.2.3 of the Development Agreement are deleted in their entirety and replaced with the following:

(a) Garage Costs; Additional Improvements Costs. Owner's obligation to fund the design, development and construction of Zone 1 and Zones 2.2 and 2.3 is described below, subject to the provisions in Section 13 herein:

(i) Owner will fund an amount not to exceed \$15,210,135 for the Garage Costs, as reflected in the Preliminary Garage Budget. Owner will fund an amount not to exceed \$6,400,000 for the Additional Improvements Costs, as reflected in the Preliminary Additional Improvements Budget. The Garage Costs and Additional Improvements Costs shall be inclusive of, but not be limited to, the City's total funding



contributions for Concurrency Requirements, the City's Prevailing Wage Ordinance, if applicable, and all costs in connection with all zoning, permit matters, and requirements imposed by Governmental Authorities, subject to the other terms of the Development Agreement as they pertain to Zones 1, 2.2 and 2.3.

(ii) The Parties agree that the design, development and construction of the Additional Improvements planned for Zones 1.2, 1.3, 2.2 and 2.3, shall be included within the definition of "Project" and "Project Site", respectively, and therefore included within the scope of Owner's obligation to fund and Developer's submissions and performance of its obligations pertaining to design, development and construction, under the original Development Agreement.

(iii) Owner shall pay to Developer the Garage Costs and the Additional Improvements Costs in the manner set forth in Section 13 herein.

(b) Zone 2.2. The construction of the Developer's Improvements within Zone 2.1 of the Symphony Campus Zone will require the displacement, re-routing and rebuilding (such work, collectively, "Realignment") of that portion of Drexel Avenue that is between Lincoln Lane and 17<sup>th</sup> Street in Miami Beach ("Drexel") in Zone 2.2. Owner has agreed that the Drexel Avenue Realignment is part of the Additional Improvements for which Owner is responsible, and that such work constitutes the improvements within Zone 2.2, and Developer has agreed to perform such Drexel Avenue Realignment on Owner's behalf at Owner's sole cost and expense.

6. Zone 4 - the Lincoln Lane Improvement Zone. The design, development and construction of all improvements planned for Zone 4, and all costs in connection therewith, including but not limited to fees due to Architectural Consultant, are solely the responsibility of Owner. Zone 4 is a part of the aesthetically integrated project contemplated in this First Addendum, and the parties agree to coordinate, cooperate and consult with one another in the planning, design, development and construction (including, without limitation, commencement of construction) of all Zone 4 improvements.

7. Zone 5 - the Pennsylvania Avenue Improvement Zone. The design, development and construction of all improvements planned for Zone 5, and all costs in connection therewith, including, but not limited to fees due to Architectural Consultant, are solely the responsibility of Owner. Zone 5 is a part of the aesthetically integrated project contemplated by this First Addendum, and the parties agree to coordinate, cooperate and consult with one another in the planning, design, development and construction (including, without limitation, commencement of construction) of all Zone 5 improvements.

8. Development of Park Project.

(a) Owner has determined to develop the Park Project as contemplated herein, and the Parties hereby agree that Developer will serve as developer of the Park Project on behalf of Owner and shall cause the Park Project to be designed, developed and constructed on behalf of the Owner and at the sole cost and expense of the Owner, subject to the terms and conditions



as set forth herein. Developer will select, at its sole discretion, all contractors, including a general contractor, and all subcontractors, consultants and other Persons (each a "Contractor" and collectively, "Contractors") Developer deems necessary to complete the Park Project in accordance with the provisions of this First Addendum and the Development Agreement.

(b) Developer's obligations pertaining to the Park Project are limited to the design, development and construction of the improvements located or to be located within the Park Project Zone, subject to the provisions of Section 13 herein, and specifically exclude any obligation or responsibility or liability whatsoever for any other property or Zone, unless otherwise provided in the Development Agreement, or agreed to in writing by the Parties.

9. Park Project Design.

(a) Developer and Owner wish to enhance the benefits to the City, the Owner and the Developer of an integrated vision and design for the development of the Project and the Park Project, and therefore Developer, with Owner's consent, has selected Gehry Partners, LLC, as the architectural consultant for the Park Project. Gehry Partners, LLC, and all necessary specialists and consultants who Gehry Partners, LLC requires to complete the Park Project Design, including but not limited to specialists and consultants in the areas of acoustics, performance venues, architecture and engineering, shall be referred to hereafter as "Architectural Consultant." Owner further acknowledges that Developer has selected, with Owner's consent, Hines Interests Limited Partnership to act on behalf of Developer as the Project and Park Project manager.

(b) Owner and Developer acknowledge and agree that the design, development and construction of the Project and the Park Project as an aesthetically integrated project in accordance with the single design vision of the Architectural Consultant will maximize the benefits of the Project and the Park Project to the City of Miami Beach. Accordingly, Owner and Developer further acknowledge and agree that the completion of the design, construction and development of the Park Project pursuant to the terms and provisions of this First Addendum and in accordance with the Park Project Design is integral to the current design, construction and development of the Project and that the Owner's election not to proceed with the Park Project (as further described in Sections 10(c) and 10(d) below) may materially and adversely affect Developer's ability to meet its projected time frames for design, construction and development of the Project.

(c) Moreover, any delays in Developer's ability to meet the Schedule and/or the Construction Commencement Date and/or the completion date for the Project, and/or any other deadline for the Project, which delays arise from Owner's election not to proceed with the Park Project, shall be treated as an "Unavoidable Delay" pursuant to the Development Agreement and this First Addendum.

10. Procedure for Park Project Design Approval.

(a) The approved Park Project's Final Basis of Design Report to be obtained as outlined in Exhibit "D" shall be the approved Park Project Concept Plan referred to herein.



(b) The Developer shall use the Design to Park Project Budget as the cost basis as described and approved in the Park Project Concept Plan. The costs, fees and expenses for such design and preparation work shall not exceed the dollar amount allotted for such work as set forth in the Design to Park Project Budget. Following approval of the Park Project Concept Plan pursuant to the Program described in Exhibit "D," Developer and the City Manager, on behalf of the Owner, acting in a proprietary and not regulatory capacity, shall meet to commence the preliminary review process. Developer shall comply with the schedule of approvals outlined in the Program described in Exhibit "D."

(c) In the event the City Commission fails to select and approve a Park Project Concept Plan, or it elects not to proceed with the Park Project, immediately thereafter the Owner shall notify the Developer in writing in accordance with Article 20 of the Development Agreement of the Owner's intent to terminate those portions of this First Addendum which relate to the Park Project, specifically Zone 3. Within thirty (30) days after Developer's receipt of the Owner's notice of intent to terminate the applicable portions of this First Addendum, the Owner shall reimburse Developer for all Park Project Design Costs incurred by Developer, which Park Project Design Costs shall not exceed the sum of \$1,110,000 (unless Owner consents to an increase in writing), but subject to Section 10(f) below. Following Developer's receipt of payment in cleared funds of all sums due hereunder, those portions of this First Addendum pertaining to the Park Project shall terminate and shall thereafter shall have no force or effect, and neither Party shall have any further rights or obligations to the other pertaining to the Park Project under this First Addendum except as set forth herein.

(d) Notwithstanding Owner's election not to proceed with the Park Project, Owner's funding obligations associated with Zones 1 and 2 will remain in full force and effect in accordance with the Development Agreement and this First Addendum. Termination of such portions of this First Addendum regarding the Park Project shall not in any respect operate to terminate, modify, amend or affect any other of the respective rights and obligations of the Parties under this First Addendum, the Development Agreement or the Lease, all of which shall continue to be in full force and effect. Further, notwithstanding such termination hereunder, Owner agrees that it shall retain Zone 3.1 of the Park Project Zone as a municipal surface parking lot or a park or similar public amenity, for the term of the Lease. This provision shall survive termination of those portions of this First Addendum pertaining to the Park Project and shall continue to be binding on the parties for the term of the Lease.

(e) Upon the City Commission's approval of a Park Project Concept Plan, the Developer and the Architectural Consultant shall prepare a more detailed design, during the course of which design process the Owner, Developer and Architectural Consultant shall consult together as often as necessary. Within 150 Calendar Days following the City Commission's approval of the Park Project Concept Plan, the Architectural Consultant and Developer shall submit a more fully developed project design to the Owner for review and approval. This further developed project design shall include, but not be limited to, fully detailed landscape drawings, detailed sidewalk and streetscape improvements, public walkways, entertainment venue details, projection and sound equipment details and specifications, utility improvements and any other improvement related to the Park Project (the "Preliminary Plans and Specifications").



(f) The Preliminary Plans and Specifications submitted to the Owner within the 150 Calendar Day design period shall be reviewed by the Owner's City Manager within 60 Calendar Days from receipt of said Preliminary Plans and Specifications. If the originally submitted Preliminary Plans and Specifications are consistent with the approved Park Project Concept Plan, but Owner rejects the Preliminary Plans and Specifications and requires the Architectural Consultant to revise or redesign the Preliminary Plans and Specifications, then in addition to the Owner's obligation to reimburse Developer for all Park Project Design Costs as set forth in subparagraph 10(c) herein, and notwithstanding the "cap" on the Park Project Design Costs of \$1,110,000 under the circumstances described therein, all costs associated with the revision, redesign and resubmission of the Park Project Concept Plan shall be borne solely by the Owner, and the "cap" of \$1,110,000 shall not apply.

(g) Upon obtaining the Owner's approval of the Preliminary Plans and Specifications, Developer shall submit an application for approval of the Preliminary Plans and Specifications to the City's DRB. Developer shall pursue approval of the application to the DRB with the assistance of the Owner acting diligently and in good faith.

(h) Upon receipt of the DRB's approval of the Preliminary Plans and Specifications (the "Park Project Design"), the Architectural Consultant shall prepare Final Plans and Specifications for construction of the Park Project consistent with the approved Park Project Design. The Final Plans and Specifications shall be submitted to the Owner within 180 Calendar Days from receipt of the DRB's approval of the Park Project Design. The Final Plans and Specifications shall be reviewed by the Owner's City Manager solely for consistency with the Park Project Design, as the same have been approved by the DRB. The City Manager shall have 60 Calendar Days to review the Final Plans and Specifications. If the originally submitted Final Plans and Specifications are consistent with the approved Preliminary Plans and Specifications, but Owner rejects the Final Plans and Specifications and requires Developer to revise or redesign the Final Plans and Specifications, then in addition to the Owner's obligation to reimburse Developer for all Park Project Costs as set forth in subparagraph 10 herein, and notwithstanding any other provision herein, and specifically notwithstanding the Preliminary Park Project Budget, all costs associated with Developer's revision, redesign and resubmission of the Final Plans and Specifications shall be borne solely by the Owner, and Owner shall promptly reimburse Developer for same.

11. Final Park Project Budget. Prior to Developer's execution of the GMP Contract with its general contractor for construction of the Park Project, Developer shall submit to Owner for Owner's approval a proposed Final Park Project Budget. If such proposed Final Park Project Budget is materially inconsistent with the Preliminary Park Project Budget, then the proposed Final Park Project Budget shall be accompanied by a memorandum in writing in sufficient detail to explain all such material inconsistencies. Approval or disapproval or modification of the Final Park Project Budget shall be governed by the provisions governing the Plans and Specifications, as applicable, as set forth in Section 10 above. Information copies of any material modifications to the Final Park Project Budget shall be promptly delivered to Owner.

(a) Notwithstanding anything to the contrary contained herein, if, upon review of the Final Park Project Budget, Owner determines, in the exercise of Owner's reasonable



business judgment, that changes to the final Park Project Design and/or Plans and Specifications required by the DRB, or any other Governmental Authority, exceeds the budget acceptable to the City and renders the final Park Project Design, as approved by the City, economically unfeasible, Owner and Developer shall value engineer the Park Project Design so that the cost to construct the revised Park Project Design acceptable to Owner does not exceed the budget amount that is acceptable to Owner. If, after value engineering the final Park Project Design, Owner will not approve a design that is within the budget amount that is acceptable to Owner, then Owner may terminate those portions of this First Addendum pertaining to the Park Project. Within thirty (30) days after Developer's receipt of the Owner's notice of intent to terminate the Park Project, the Owner shall reimburse Developer in full for all Park Project Costs incurred by Developer. Following Developer's receipt of payment in cleared funds of all sums due hereunder, those portions of this First Addendum pertaining to the Park Project shall terminate and shall thereafter shall have no force or effect, and neither Party shall have any further rights or obligations to the other pertaining to the Park Project under this First Addendum except as set forth herein. The provisions of Section 10(d) herein shall apply.

(b) Notwithstanding anything contained in this First Addendum or the Development Agreement, the Parties acknowledge and agree that (i) the Final Park Project Budget shall represent the total amount of funding which the Owner has determined to make available for the development, design, and construction of the Park Project and, accordingly, the Final Park Project Budget shall not be exceeded and/or increased without the express authorization of the City Commission. The Developer shall not be liable to Owner or any Contractor or other third party for payment of any portion of the costs, fees or expenses properly incurred by Developer on behalf of Owner in connection with the Park Project provided such costs, fees or expenses are within, and in accordance with, the Final Park Project Budget. Moreover, Developer shall have no obligation or duty whatsoever to incur costs or expenses which would cause the Park Project Design Costs to exceed the Final Park Project Budget.

(c) Except as otherwise set forth in this Addendum to the contrary, the general procedures and requirements set forth in the Development Agreement pertaining to the construction of the Garage and Developer's Improvements shall apply to construction by Developer of the Additional Improvements and the Park Project, including but not limited to Sections 2.5(e), (f) and (g), and [Sections 3.2.1, 3.3, 3.4] [NOTE: check accuracy of section numbers] and as otherwise applicable to construction in general.

12. Grant-In-Aid; Reimbursement Agreement. The Parties agree that it is in the best interests of the City, its residents, the Owner and the Developer for the Project to be built and operated as envisioned in the Lease and the Development Agreement. Consequently, in full understanding and acknowledgement that each party's agreement to perform its respective obligations is expressly conditioned upon the other party's agreement to perform its obligations, and the obligation of each to perform is mutually contingent upon the other's performance, and that but for the agreement and performance of each, this First Addendum could not succeed, the Parties agree as follows:

(a) Owner hereby grants to Developer and agrees to pay to Developer a grant-in-aid ("Grant") in the aggregate sum of \$15,000,000 in the manner and at the times described in